

AMENDED IN SENATE AUGUST 22, 2002  
AMENDED IN SENATE AUGUST 5, 2002  
AMENDED IN ASSEMBLY MAY 28, 2002  
AMENDED IN ASSEMBLY MAY 15, 2002  
AMENDED IN ASSEMBLY APRIL 15, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2732**

---

**Introduced by Assembly Member Washington  
(Coauthor: Assembly Member Corbett)**

February 22, 2002

---

An act to add Chapter 13 (commencing with Section 13300) to Division 5 of the Business and Professions Code, relating to automatic checkout systems.

LEGISLATIVE COUNSEL'S DIGEST

AB 2732, as amended, Washington. Automatic checkout systems.

The Rosenthal-Roberti Item Pricing Act requires every retail grocery store or grocery department within a general retail merchandise store which uses an automatic checkout system to cause to have a clearly readable price indicated on 85% of the total number of packaged consumer commodities offered for sale, unless the commodities are otherwise exempted.

Existing law authorizes any sealer to levy a civil penalty against a person who violates specified laws or regulations governing weights

and measures. A violation of the laws governing weights and measures is a misdemeanor unless otherwise specified.

This bill would add new provisions to the laws governing weights and measures that would require a business establishment that uses an automatic checkout system to sell goods or services to consumers to ensure that the price of each good or service to be paid by the consumer is conspicuously displayed to the consumer at the time the price is interpreted by the system. The bill would authorize the Attorney General, the district attorney, or city attorney to enforce this requirement in accordance with certain provisions of law. *This bill would, in addition, authorize the sealer to levy a civil penalty for a violation of these provisions.*

The bill would require all automatic checkout systems used by a business establishment on and after January 1, 2007, to comply with its provisions.

Because a violation of the laws governing weights and measures is a crime, this bill would impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. It is the intent of the Legislature that the state  
2 laws that protect consumers be adequately enforced to ensure fair  
3 business practices. It is also the intent of the Legislature to ensure  
4 that business owners are not unfairly harassed by litigation that is  
5 without merit. The Legislature finds and declares that the  
6 provisions of law relating to frivolous actions apply to actions filed  
7 under this act.  
8     SEC. 2. Chapter 13 (commencing with Section 13300) is  
9 added to Division 5 of the Business and Professions Code, to read:  
10



## CHAPTER 13. AUTOMATIC CHECKOUT SYSTEMS

13300. (a) The operator of a business establishment that uses an automatic checkout system to sell goods or services to consumers shall ensure that the price of each good or service to be paid by the consumer is conspicuously displayed to the consumer at the time that the price is interpreted by the system. All price reductions, surcharges, taxes, and the total amount for each transaction also shall be displayed for the consumer at least once before the consumer is required to pay for the goods or services. The checkout system customer indicator shall be so positioned, and the prices and amounts displayed shall be of a size and form, as to be easily viewable from a typical and reasonable customer position at each checkout location.

(b) For the purposes of this section, “automatic checkout system” means a computer or any electronic system used to interpret the universal bar code or any other code that is on an item offered for sale to determine the price of the item being purchased regardless of whether the code entry is accomplished manually by a human or automatically by a machine.

(c) All automatic checkout systems used by a business establishment on and after January 1, 2007, shall comply with the requirement of subdivision (a).

13301. Notwithstanding any other provision of this division, the Attorney General, the district attorney, or city attorney may enforce the provisions of this chapter in accordance with the provisions of Division 5 (commencing with Section 12001) or any other applicable provisions of law.

13302. (a) *The sealer may levy a civil penalty against a person violating any provision of this chapter or a regulation adopted pursuant to any of these provisions, of not more than one thousand dollars (\$1,000) for each violation. It is a complete defense to a criminal prosecution for a violation of any provision of this division or a regulation adopted pursuant to any provision of this division that the defendant has been assessed and has paid a civil penalty under this section for the same act or acts constituting the violation. Any civil penalty under this section shall be cumulative to civil remedies or penalties imposed under any other law.*

1 (b) Before a civil penalty is levied, the person charged with the  
2 violation shall be given a written notice of the proposed action  
3 including the nature of the violation and the amount of the  
4 proposed penalty, and shall have the right to request a hearing.  
5 The request shall be made within 20 days after receiving notice of  
6 the proposed action. A notice of the proposed action that is sent by  
7 certified mail to the last known address of the person charged shall  
8 be considered received even if delivery is refused or the notice is  
9 not accepted at that address. If a hearing is requested, notice of the  
10 time and place of the hearing shall be given at least 10 days before  
11 the date set for the hearing. At the hearing, the person shall be  
12 given an opportunity to review the sealer's evidence and to present  
13 evidence on his or her own behalf.

14 If a hearing is not timely requested, the sealer may take the  
15 action proposed without a hearing.

16 (c) If the person upon whom the sealer levied a civil penalty  
17 requested and appeared at a hearing, the person may appeal the  
18 sealer's decision to the secretary within 30 days of the date of  
19 receiving a copy of the sealer's decision. The following procedures  
20 apply to the appeal:

21 (1) The appeal shall be in writing and signed by the appellant  
22 or his or her authorized agent, state the grounds for the appeal,  
23 and include a copy of the sealer's decision. The appellant shall file  
24 a copy of the appeal with the sealer at the same time it is filed with  
25 the secretary.

26 (2) The appellant and the sealer may, at the time of filing the  
27 appeal or within 10 days thereafter or at a later time prescribed by  
28 the secretary, present the record of the hearing including written  
29 evidence that was submitted at the hearing and a written argument  
30 to the secretary stating grounds for affirming, modifying, or  
31 reversing the sealer's decision.

32 (3) The secretary may grant oral arguments upon application  
33 made at the time written arguments are filed.

34 (4) If an application to present an oral argument is granted,  
35 written notice of the time and place for the oral argument shall be  
36 given at least 10 days before the date set therefor. The times may  
37 be altered by mutual agreement of the appellant, the sealer, and the  
38 secretary.

39 (5) The secretary shall decide the appeal on the record of the  
40 hearing, including the written evidence and the written argument

1 *described in paragraph (2), that he or she has received. If the*  
2 *secretary finds substantial evidence in the record to support the*  
3 *sealer's decision, the secretary shall affirm the decision.*

4 *(6) The secretary shall render a written decision within 45 days*  
5 *of the date of appeal or within 15 days of the date of oral arguments*  
6 *or as soon thereafter as practical.*

7 *(7) On an appeal pursuant to this section, the secretary may*  
8 *affirm the sealer's decision, modify the sealer's decision by*  
9 *reducing or increasing the amount of the penalty levied so that it*  
10 *is within the secretary's guidelines for imposing civil penalties, or*  
11 *reverse the sealer's decision. Any civil penalty increased by the*  
12 *secretary shall not be higher than that proposed in the sealer's*  
13 *notice of proposed action given pursuant to subdivision (b). A copy*  
14 *of the secretary's decision shall be delivered or mailed to the*  
15 *appellant and the sealer.*

16 *(8) Any person who does not request a hearing pursuant to*  
17 *subdivision (b) may not file an appeal pursuant to this subdivision.*

18 *(9) Review of a decision of the secretary may be sought by the*  
19 *appellant within 30 days of the date of the decision pursuant to*  
20 *Section 1094.5 of the Code of Civil Procedure.*

21 *(d) After the exhaustion of the appeal and review procedures*  
22 *provided in this section, the sealer, or his or her representative,*  
23 *may file a certified copy of a final decision of the sealer that directs*  
24 *the payment of a civil penalty and, if applicable, a copy of any*  
25 *decision of the secretary or his or her authorized representative*  
26 *rendered on an appeal from the sealer's decision and a copy of any*  
27 *order that denies a petition for a writ of administrative mandamus,*  
28 *with the clerk of the superior court of any county. Judgment shall*  
29 *be entered immediately by the clerk in conformity with the decision*  
30 *or order. No fees shall be charged by the clerk of the superior court*  
31 *for the performance of any official service required in connection*  
32 *with the entry of judgment pursuant to this section.*

33 *(e) If the civil penalty is levied by the State Sealer, the revenues*  
34 *derived therefrom shall be deposited in the Department of Food*  
35 *and Agriculture Fund and, upon appropriation, shall be used by*  
36 *the State Sealer to carry out his or her responsibilities under this*  
37 *division. If the civil penalty is levied by the county sealer, the*  
38 *revenues shall be deposited in the general fund of the county and,*  
39 *upon appropriation by the board of supervisors, shall be used by*

1 *the county sealer to carry out his or her responsibilities under this*  
2 *chapter.*

3 SEC. 2. No reimbursement is required by this act pursuant to  
4 Section 6 of Article XIII B of the California Constitution because  
5 the only costs that may be incurred by a local agency or school  
6 district will be incurred because this act creates a new crime or  
7 infraction, eliminates a crime or infraction, or changes the penalty  
8 for a crime or infraction, within the meaning of Section 17556 of  
9 the Government Code, or changes the definition of a crime within  
10 the meaning of Section 6 of Article XIII B of the California  
11 Constitution.

